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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,685

03/19/2004

Brian J. Conaway

3984500-146939

8539

3705 7590 03/12/2008
ECKERT SEAMANS CHERIN & MELLOTT
600 GRANT STREET
44TH FLOOR
PITTSBURGH, PA 15219

EXAMINER

AVERY, BRIDGET D

ART UNIT

PAPER NUMBER

3618

MAIL DATE

DELIVERY MODE

03/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/805,685
Filing Date: March 19, 2004
Appellant(s): CONAWAY ET AL.

David C. Jenkins Reg. No. 42,691
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 14, 2007 appealing from the Office action mailed March 9, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,660,446	EDHARDT	3-1951
6,017,053	LEGER ET AL.	1-2000
5,026,079	DONZE ET AL.	6-1991

6,186,523

AIELLI

2-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claims 23, 25, 27, 28, 30-32, 36, 38-42, 46 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Edhardt (US Patent 2,660,446).

Edhardt teaches a wheelbarrow including, in combination: a rigid front bracket/frame/hood (3); a wheel (1) rotatably secured to the front bracket (3) and rotatable about a horizontally, laterally extending axis of rotation (see axle 2); first and second handle arms (11) pivotally attached (as shown in Figure 1) to the front bracket (3); a rigid tray (clearly shown in phantom in Figures 2 and 3); a clamping device (8 as stated in column 1, lines 30-34) extending between the first and second handle arms (11) and removably applying a laterally-extending adjustable clamping force between the first and second handle arms (11) to move the first and second handle arms (11) relative to one another in a lateral direction and clamp the tray (as stated in col. 50-54) between the first and second handle arms (11). The interconnection of the tray (shown in phantom) with the first and second handle arms (11) permit relative movement therebetween in a lateral direction and prevents movement therebetween in each direction other than the lateral direction. Re claim 25, a bolt is a rigid rod. Re claim 30, the front bracket is clearly U-shaped and includes a front section and two rearwardly extending legs (defined by top plate 4 and side plates 6), first and second laterally

spaced apart leg sections (4). Re claim 36, note the laterally spaced apart pivot axes formed by frame/hood (3) from which shafts (7) extend.

Claim Rejections - 35 USC § 103

Claims 24, 43-45 and 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edhardt ('446) in view of Leger et al. (US Patent 5,908,202).

Edhardt teaches the features described above.

Edhardt lacks the teaching of a flexible cable.

Leger et al. teaches a clamping device including a flexible cable.

Based on the teachings of Leger et al., it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide a flexible cable between the handle arms to work along with the bolt to limit movement of the handles in the extended position. Re claim 45, a wing nut provides a rotatable handle.

Claims 29 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edhardt ('446) in view of Donze et al. (US Patent 5,026,079).

Edhardt teaches the features described above.

Edhardt lacks the teaching of a telescoping handle arms.

Donze et al. teaches telescoping handle arms (16).

Based on the teachings of Donze et al., it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to replace the handle arms taught by Edhardt with telescoping arms to allow for easier storage during

transportation of the wheelbarrow and to permit the height or position of the handle arms to be adjusted depending on the stature of the user so as to avoid an uncomfortable working position.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edhardt ('446) in view of Aielli (US Patent 6,186,523).

Edhardt teaches the features described above.

Edhardt lacks the teaching of tabs extending laterally outward and handle arms having slots and grooves.

Aielli teaches a tray having tabs/spring pin brackets (43) that couple to a rear lower surface.

Based on the teachings of Aielli, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add tabs to the tray of Edhardt to prevent unintended disconnection of the tray from the wheelbarrow. It would have been an obvious matter of design choice to add slots and grooves to the handle arms, since applicant has not disclosed that the slots solve any stated problem or is for any particular purpose and it appears the invention would perform equally well with the tabs/spring pin brackets that couple to a rear lower surface.

(10) Response to Argument

In response to appellant's argument found on page 11, lines 9-10. Patents are presumed operable and the clamping means move the handle arms which meets the breadth of appellant's claims.

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Contrary to appellant's argument on page 12, paragraphs 1 and 2, Edhardt teaches the bolt and wing nut as a single clamping means extending between side plates (4) for limiting rotation of both shafts, as clearly stated in col. 1, lines 26-34. Further, movement of the first and second handle arms (1) relative to one another in a lateral direction is clearly shown in Figure 1.

In response to appellant's argument found on page 12, paragraph 3, Edhardt in col. 1, lines 11-15 teaches "a removable basket". The handle arms (11) are formed with outwardly arcuate portions to securely hold the removable basket/tray.

In response to appellant's arguments on pages 13 and 14, the bracket (3) taught by Edhardt clearly includes a laterally extending front section and two rearwardly extending legs, as defined by top plate (4) and side plates (6).

Contrary to appellant's argument on page 16, Edhardt and Leger et al. ('053) each teach a folding wheelbarrow (i.e. same field of endeavor). Both are concerned with limiting movement of the handle arms (i.e. same problem solving). Therefore, it would have been obvious to one having ordinary skill in the art to combine the teachings of Edhardt and Leger et al.

Contrary to appellant's argument regarding the rejection of claims 29 and 37 which starts on page 19, paragraph 5 of the brief, Donze et al. ('079) clearly states in col. 4, lines 7-11, the telescopic adjustment of the length of the tubular members 12 permits the height or position of the hand grips 15 to be adjusted depending on the stature of the user so as to avoid and uncomfortable working position.

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In response to appellant's argument on page 21, paragraph 5, the provision of tabs or rails would have been obvious to securely couple the container to the handles, as taught by Aielli ('523) in col. 4, lines 49-54.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Bridget Avery/

Examiner, Art Unit 3618

Conferees:

/B. A./

Examiner, Art Unit 3618

Meredith Petravick /mcp/

Christopher Ellis /cpe/